IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 199 OF 1997

Surekha Gajanan Patne & Ors. .. Petitioners.

V/s.

Manohar R. Patankar .. Respondent.

Mr. S.S. Kanitkar for the Petitioners.

Mr. S.M. Railkar for the Respondent.

CORAM : S. A. BOBDE, J.
DATED : 03rd MAY, 2006

PC :

1. Heard both the learned counsel.

2. The only contention of Mr. Kanitkar, the learned counsel for the petitioners is that the executing Court committed an error in permitting the parties to lead evidence on the question - Whether the decree holder i.e. the deceased D.H. Gajanan Patne has executed valid sale deed in favour of the present J.D. Manohar Patankar on 27.7.1990 in respect of the suit premises. According to the petitioners this could not have been permitted in view of the absence of any reference to the sale deed in the Special Leave Petition before the Supreme Court.

3. It is not necessary to go into this question in view of the submission of Mr. Railkar, the learned counsel for the Respondents that whether the sale deed would be considered or not is no more res -integra and is already decided by this court on 21.04.1995 while deciding the Civil Application No. 4091/1994. This court has observed as follows :-

> " While considering Darkhast No.8 of 1985 in Regular Civil Suit No.9 of 1981, the executing Court shall grant an opportunity to Manohar Ramchandra Patankar to file his objection to the execution proceedings based on registered sale deed dated 27.7.1990. The executing court shall examine the said objection and pass appropriate judicial order thereafter.
>
> . Civil Application No. 4091 of 1994 is finally disposed of in terms aforesaid."

4. Admittedly, the petitioners have not challenged this order. Mr. Kanitkar submitted that the record does not indicate that the petitioners were heard before passing said order in the Civil Application. Whatever be the position, it is clear that the petitioners have not

challenged the aforesaid order in spite of having been passed as early as in the year, 1995.

5. In the circumstances, I am of the view that it would serve the interest of justice if the executing Court is allowed to decide the issue uninfluenced by any observation on merit made by this court. The executing Court shall decide the execution proceedings as early as possible and not later than one year from the date the parties appear before it. The parties are directed to appear before the executing Court on 5th of June, 2006.

6. Rule is made absolute in the above terms. Petition disposed of.

03.05.2006 (S.A.BOBDE,J)

.....